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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967.

No. 510

MARVIN L. PICKERING,

Appellant,

vs.

BOARD OF EDUCATION OF TOWNSHIP HIGH SCHOOL DISTRICT 205, WILL COUNTY, ILLINOIS,

Appellee.

APPEAL FROM THE SUPREME COURT OF ILLINOIS.

STATEMENT AS TO JURISDICTION.

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APPEAL FROM THE SUPREME COURT OF ILLINOIS.

JURISDICTIONAL STATEMENT.

Appellant appeals from the judgment of the Supreme Court of Illinois entered on January 19, 1967, and the order of that court denying a petition for rehearing entered on March 27, 1967; by which judgment and refusal to rehear the Supreme Court of Illinois affirmed the order of the Circuit Court of Will County, Illinois, confirming the dismissal of appellant as a public school teacher in and for appellee. Appellant sets forth the following statement to show that the Supreme Court of the United States has jurisdiction of the Appeal and that a substantial question is presented.

OPINIONS BELOW.

The final administrative decision of appellee Board of Education confirming its dismissal of appellant as a public school teacher on December 2, 1964, is set out in Appendix C.

The original board resolution dated October 8, 1964, and incorporated into the final decision is set out in Appendix A.

The answer to a bill of particulars also incorporated into the final decision is set out in Appendix B.

The opinion of the Circuit Court of Will County, Illinois filed March 2, 1966 and its final order entered March 25, 1966, are set out in Appendix D.

The majority and dissenting opinion of the Illinois Supreme Court are reported at 225 N. E. 2d 1.

The order of the Illinois Supreme Court dated March 27, 1967, denying rehearing is set out in Appendix E.

JURISDICTION.

This case began when appellant was dismissed by his employer, appellee Board of Education, for writing a letter critical of the board and administration of the school district. The board relied on *Ill. Rev. Stat.*, Chap. 122, Sec. 10-22.4 (1963) for its power to dismiss. Appellant, a tenure teacher, demanded a hearing pursuant to *Ill. Rev. Stat.*, Chap. 122, Sec. 24-10 to 24-15. Upon completion of the hearing the board confirmed the dismissal and appellant filed suit for review of the final administrative decision pursuant to *Ill. Rev. Stat.*, Chap. 110, Sec. 264 to 279. The Circuit Court of Will County affirmed the decision of the board and appellant took a direct appeal to the Illinois Supreme Court under Illinois Supreme Court Rule 28-1 (1965) which provides "Appeals from the final judgments of circuit courts shall be taken directly to the Supreme

Court: * * * (b) in cases involving a question arising under the Constitution of the United States or of this State." (The revised rules keep this as rule No. 302 which is set out at 36 Ill. 2d 103.)

The Supreme Court of Illinois affirmed with Chief Justice Solfisburg and Justice Schaefer dissenting on January 19, 1967. A petition for rehearing was denied on March 27, 1967, and notice of appeal to the Supreme Court of the United States was filed with the Clerk of the Supreme Court of Illinois on June 21, 1967.

The jurisdiction of the Supreme Court to review this decision is conferred by Title 28 United States Code Section 1257(2). The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on appeal in this case:

Dahnke-Walker Milling Co. v. *Bondurant*, 257 U. S. 282 (1921).

Nashville C. & St. L. Ry. v. *Walters*, 294 U. S. 405 (1935).

STATUTES INVOLVED.

Illinois Revised Statutes (1963), Chapter 122 Section 10-22.4 is challenged as unconstitutional. It provides:

"Sec. 10-22. *Powers of board.* The school board shall have the powers enumerated . . .

Sec. 10-22.4 *Dismissal of teachers.* To dismiss a teacher for incompetency, cruelty, negligence, immorality or other sufficient cause and to dismiss any teacher, whenever, in its opinion, he is not qualified to teach, or whenever, in its opinion, the interests of the schools require it, subject, however to the provisions of Sections 24-10 to 24-15, inclusive. Marriage is not a cause for removal."

(The statute has remained unchanged during the pendency of the proceedings.)

Illinois Revised Statutes, Chapter 122, Section 24-12 is involved. It provides procedures for dismissal of tenure teachers, such as appellant, by way of a hearing before the employing school board. In its material part it provides:

> 24-12: "• • • If the dismissal or removal is for any other reasons [than decrease in number of teachers] or cause it does not become effective until approved by a majority vote of all members of the board upon specific charges and after a hearing, if a hearing is requested in writing by the teacher within 10 days after the service of notice as herein provided. . . ."

(The 1967 Illinois General Assembly has approved an amendment providing for an independent hearing officer instead of the employing board. The bill has not yet been presented to the governor. The change will not alter the disposition of this case.)

Illinois Revised Statutes, Chapter 110, Par. 264-279 provide for judicial review of final administrative decisions (including dismissal of tenure teachers) and in the part material to this case provides:

> Par. 274: "Every action to review any final administrative decision shall be heard and determined by the court with all convenient speed. The hearing and determination shall extend to all questions of law and of fact presented by the entire record before the court. No new additional evidence in support of or in opposition to any finding, order, determination or decision of the administrative agency shall be heard by the court. The findings and conclusions of the administrative agency on questions of fact shall be held to be *prima facie* true and correct."

QUESTIONS PRESENTED.

1. Does *Illinois Revised Statutes,* Chapter 122, Sec. 10-22.4 which empowers boards of education to dismiss teachers, place an unconstitutional limitation upon the exercise by teachers of the right of free speech as guaranteed by the First and Fourteenth Amendments to the United States Constitution?

a. Has appellant's right of free speech been infringed by the school board's dismissing him under this statute because appellant wrote and published a letter which was critical of the board of education and administration but which did not contain statements that were knowingly or recklessly false?

b. Does the statute provide clear and precise language which advised appellant before he wrote the letter that he would be subject to dismissal or is the statutory language unconstitutionally "void for vagueness?"

2. Is the decision of the Illinois Supreme Court itself an unconstitutional limitation on appellant's right of free speech and is the decision also unconstitutionally vague?

3. Prescinding from the particular statute and decision, can appellant, or any pubic school teacher, be dismissed for writing and publishing statements critical of his board of education and administration when the statements are substantially correct?

4. Does the mere fact that plaintiff is an employee of government automatically restrict or curtail his right to free speech as guaranteed by the Constitution?

5. Does an employment dismissal hearing comply with the Due Process requirements of the Fourteenth Amendment to the Constitution of the United States in a case in which a teacher has written and published a letter critical of his board of education and administration when the

Board of Education acts as prosecutor of the cause, and the Board of Education also acts as the trier of facts and the findings of the Board of Education are entitled to be considered *prima facie* correct upon judicial review?

STATEMENT OF THE CASE.

In September, 1959, Marvin L. Pickering began his duties as a regularly certified public school teacher for the Board of Education of Township High School District 205, Will County, Illinois. At that time and subsequently Pickering was also a resident of the district.

During the next five years the board of education submitted four tax proposals to the voters of the district. Two concerned bonds for the construction of new schools. Two concerned tax rate increases. The material dates are:

February 25, 1961: The board asked the voters to approve a bond issue to raise $4,875,000 to erect two new schools. This proposal was defeated.

December 2, 1961: The board submitted to the voters another bond proposal, this time calling for the authorization of a bond issue to raise $5,500,000 to build two new schools. The proposal was passed. The bonds were issued and the schools were built.

May 23, 1964: The board submitted a proposal calling for an increase in the tax rate. The voters defeated the proposal.

September 19, 1964: The board submitted a second proposal calling for an increase in the tax rate. It was this second tax rate increase proposal that brought Marvin Pickering from obscurity.

In the weeks which preceded the election, the Lockport Township High School District 205 Teacher's Organization published a series of columns in the local newspaper,

the *Lockport Herald.* Some of these columns urged passage of the September 19th tax rate increase proposal. In its July 30, 1964, column the organization said:

> "Some curtailment of essential curricular offerings has already occurred. Continued refusal to provide funds must eventually result in more drastic reductions in curriculum, equipment and services."

On September 17th the organization column said:

> "Voting NO on Saturday, Sept. 19, will mean that our students—many leaders of the future—will be offered substandard educational opportunities which could lead to substandard outlooks in adult life."

In the same September 17th issue the superintendent of the district had a letter published which said:

> "An increase is needed in our present tax rates . . . By supporting these necessary tax increases we can continue to provide quality education. A defeat means that education and students will suffer. * * * We hope you will find a few minutes to vote on this proposition of September 19.
>
> Your Board of Education and Administration."

The superintendent's letter was distributed in mimeographed form to the voters on September 18th. The next day the voters of the district rejected the proposed tax increase.

Marvin Pickering had just started his sixth year of teaching in the district when the September 19th tax increase was defeated. In his first five years he had apparently taught without incident. The record contains nothing about his teaching ability. Whether he was the object of reprimand or the subject of special praise is not disclosed. Although he had actively supported one of the 1961 building bond proposals, he drew no special attention until a letter he submitted to the editor of the *Lock-*

port Herald on September 22, 1964, appeared in the September 24th edition of the newspaper.

On October 8, 1964, the Board of Education adopted a resolution dismissing him because of his statements in the letter. The resolution and letter which is incorporated into the resolution is set out in Appendix A.

Being a tenure teacher, Pickering demanded a hearing pursuant to *Ill. Rev. Stat.*, Chap. 122, Sec. 24-12. He also demanded a Bill of Particulars. The hearing was granted and the board supplied an Answer to the Bill of Particulars specifying the parts of the letter to which it objected (Appendix B).

The basic charges against Pickering were that statements in the letter were untrue and that because they were untrue the reputations of the board, administration and the schools were injured; the statements would disrupt the discipline of the teachers; and the statements would tend "to foment controversy, conflict and dissension" among board, administration, faculty and residents of the district.

The board in its Answer to Bill of Particulars (Appendix B) asserted that Pickering's letter was untrue in 16 particulars. Pickering's response to this charge of factual inaccuracy was and remains that his statements were essentially correct. Additionally, Pickering's attorney took the position at the hearing:

> "That all this testimony today is basically irrelevant because I think the real issue here is whether he has a right to write the letter, without reference to the fact as to whether every statement in it was true or untrue."

The hearing was chiefly concerned with the accuracy or inaccuracy of the statements. No evidence was received concerning the reputation of the board members, administration or schools. No evidence was received concerning disruption of teacher discipline.

At the close of the hearing the board adopted a summary resolution which found that the charges of the initial resolution (Appendix A) and the Bill of Particulars (Appendix B) had been proved. The board concluded that the statements were factually untrue and that this resulted in *per se* injury to the reputation of the schools and its officials and would be *per se* disruptive of teacher discipline.

Pursuant to the Administrative Review Act (*Ill. Rev. Stat.*, Chap. 110, Par. 264-279) Pickering sued for review of his dismissal in the Circuit Court of Will County, Illinois. His complaint asserted denial

> "of his property and personal rights wthout due process of law in violation of the Fourteenth Amendment of the Constitution of the United States • • • of his right to freedom of the press and of speech in violation of the First Amendment of the Constitution of the United States."

The Circuit Court held that the

> "standard in the statute that the board has power to dismiss any teacher 'whenever, in its opinion, the interests of the schools require it' is constitutionally sufficient. It is not a standard so vague and indefinite as to be a denial of due process." (Appendix D.)

The Circuit Court also held that the "interests of the school" "override Pickering's freedom of speech." The Circuit Court concluded by affirming the dismissal.

Pickering appealed to the Illinois Supreme Court which affirmed.

The majority and dissenting opinions adequately frame the factual and legal dispute which Pickering now brings to the Supreme Court.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL.

The right of public employees to express their opinions freely even though such opinions may be critical of the government officials who employ them has reached the highest courts in five jurisdictions during the last term of the Supreme Court.

On November 29, 1966, the New York Court of Appeals in a 4-3 decision upheld the dismissal of the Bethpage New York teacher who had by letter and oral statements criticized certain policies of the school system. *Puentes* v. *Board of Education,* 223 N. E. 2d 45, 226 N. E. 2d 701. Attorneys for Marvin Pickering have been informed that a petition for writ of certiorari either has or will be shortly filed with this court.

On December 7, 1966, the Supreme Court of Alaska in a 2-1 decision upheld the dismissal of two teachers by the Seward, Alaska, school system. The teachers had openly criticized certain policies of the school system and had made public statements concerning a possible campaign to remove the superintendent from office. The teachers in the *Watts* case currently have a petition for writ of certiorari pending before this court. *Watts* v. *Seward School Board,* 421 P. 2d 586. Justice Rabinowitz in his dissent said:

> "By today's decision the right of free speech in this state has sustained a serious encroachment. Apparently the principles that free speech encompasses 'uninhibited', 'robust', and 'wide-open' debate on public issues has been shunted aside. In its place has been substituted a holding that cannot fail to curtail discussion among those most intimately concerned with this state's educational system."

On December 20, 1966, the Supreme Court of California in 4-2 decision held that although an employee's campaign-

ing against his own superior in a recall election might be subject to prohibition and was within the scope of a directive prohibiting political activity, the directive was constitutionally void because of overbreath. *Bagley* v. *Washington Township Hospital District et al,* 421 P. 2d 409, 55 Cal. Rptr. 401. The California Supreme Court said:

> "The public employee surely enjoys the status of a person protected by constitutional right. Public employment does not deprive him of constitutional protection. In the absence of an imperative necessity to protect the public from irresponsible activity of so serious a nature that it would disrupt the public welfare, such protections are not subject to destruction by a public employer's insistence that they be waived by contract."

On January 19, 1967, the Illinois Supreme Court in a 5-2 decision upheld the dismissal of Marvin Pickering.

On July 11, 1967, the Supreme Court of Iowa in a 4-3 decision overruled the suspension of three firemen who had violated a department rule by publishing statements regarding a dispute between the department and the firemen's union. The court concluded:

> "Generally speaking, employees have a right to publicize the facts of a labor dispute * * * In absence of proof of impairment of the administration of public service, this rule applies to public employees." *Klein et al.* v. *Civil Service Commission,* Iowa Supreme Court No. 147-52552.

The question of the right of public employees to criticize the government and officials for whom they work has arisen in the past but never with the intensity of the last year. The five states which since November 29, 1966, have considered the issue contain 25% of the population of the United States.

The division of judicial opinion on the subject is demonstrated by the fact that each of the five cases had a dissent

of at least two (except Alaska which has only three justices) and, the peculiarities of each case aside, simple arithmetic shows 14 justices on one side of the issue and 16 on the other.

Prior to this recent upsurge of public employee-free speech cases the chief constitutional question concerning such employees had been the loyalty oath. The question of public employees criticizing the government officials and practices has been considered by the Supreme Court only in the *Watts* case which this court remanded for further consideration. 381 U. S. 126.

It appears, however, that prior to 1966, state courts have given adequate consideration of the right of public employees to voice criticism of their employers. The Florida Supreme Court in *City of St. Petersburg* v. *Pfeiffer*, 52 So. 2d 796 (1951) held "an employee may express himself freely so long as he does not impair the administration of the service in which he is engaged." The same court in *Adams* v. *State*, 69 So. 2d 309 (1954) ordered reinstatement of a principal who had actively campaigned against the election of the district superintendent. The court described the apprehension that disloyalty would result as "speculative" and pointed out that if insubordination or other misdeeds occur then a dismissal would be proper.

The Louisiana Supreme Court in 1958 in *Brickman* v. *New Orleans Aviation Board*, 107 So. 2d 422, upheld the right of criticism unless there is proof of impairment of service. Likewise the California Court of Appeals in *Board of Trustees* v. *Owens*, 23 Cal. Reptr. 719, 720 (1962), held for a teacher who criticized his board because there was no evidence of "an impairment of the teaching process."

The Wisconsin Supreme Court *State* v. *McPhee*, 194 N. W. 2d 711 (1959), also upheld a professor whose statements "no matter how derogatory" * * * "fall short of instigating others to engage in a wrongful course."

Florida, Louisiana, California and Wisconsin do not provide overwhelming authority. However, when considered with recent decisions of this court, they would probably form adequate safeguards for public employees and for the public interest in both public debate and efficient public services.

The series of loyalty oath cases considered by this court demonstrate that the two basic principles of constitutional law regarding first amendment rights apply with full force to the public employee. First, in order to have any limitation at all there must be an overriding interest of the State that justifies suppression of the right. Second, assuming the existence of such an overriding interest the limitation must be narrowly drawn in clear and precise terms. *Wieman* v. *Updegraff*, 344 U. S. 183; *Cramp* v. *Board of Public Instruction*, 368 U. S. 278; *Baggett* v. *Bullitt*, 377 U. S. 360; *Elfbrandt* v. *Russell*, 384 U. S. 11; *Keyishian* v. *Board of Regents*, 385 U. S. 589.

The loyalty oath cases coupled with *New York Times* v. *Sullivan*, 376 U. S. 254, and *Linn* v. *United Public Guard Workers*, 383 U. S. 53, give ample indication that a public employee's right to criticize extends unless and until his comments are knowingly or recklessly false. Although the board (Appendix A, B, C) did not find the letter to be either knowingly or recklessly false this element was ignored by the majority of the Illinois Supreme Court.

Notwithstanding the previous state case formula—"the right to criticize continues unless there is actual impairment of service"—and the convergence of *Keyishian*, *New York Times* and *Linn*, this aspect of constitutional law on the practical day to day school district level remains in a state of confusion so that at least in New York, Illinois and Alaska teachers are best advised to say nothing lest what they say may be deemed "against the best interests of the schools."

It would appear that public employees in the 40 or more jurisdictions which have not yet reached the question are in danger of having the *Pickering, Puentes* and *Watts* cases give their courts direction instead of the California and Iowa decisions.

Appellant suggests that constitutional rights should not depend upon the jurisdiction in which a person resides or works.

This question is likely to arise even more often in the future. Public employment is expanding rapidly. Approximately one in every seven employees works for government—with the largest numbers and the greatest rate of increase being in the state and local field.

But the magnitude of the question takes on special significance for teachers because of the peculiar statutory schemes under which they may be dismissed. Illinois is fairly typical.

A teacher who has achieved tenure may be dismissed only after a hearing if he demands one. But the hearing is conducted by the same board which dismissed him. It is that board which hears evidence and makes the findings. To compound the difficulty, when judicial review is sought, the findings of the board are deemed *prima facie* true and correct (*Ill. Rev. Stat.*, Chap. 110, Sec. 274).

The root evil is the board acting in the triple capacity of prosecutor, judge and jury. In this case it was the very board which had been criticized that decided that Marvin Pickering's statements were not in the best interests of the district. This procedure has been the subject of repeated criticism including that of Justice Schaefer who, in his dissent to this case, described it as "unseemly if not unconstitutional." Thus, a finding of *per se* damage made by the very persons who were *per se* damaged goes to a court with the benefit of a rule that makes the finding

prima facie correct. This pyramiding of presumptions directly challenges the public interest in having free, wide open debate.

The 1967 Illinois legislature has amended the procedure to provide for an independent hearing officer but Marvin Pickering is not thereby benefited nor are teachers in other states where the practice of using an independent hearing officer is not common.

Marvin Pickering has been dismissed. The monetary losses are but a small part of his burdens. The loss of professional status and the social stigma of having been fired are a heavy price to pay for entering into public debate. It is doubtful that he will put pen to paper again and it is certain that thousands of Illinois teachers will voice opinions in the most circumspect and guarded terms and even then with the fear of Pickering's fate becoming theirs.

Appellant suggests to this court that its decisions in the loyalty oath cases have had great effect but that in addition to having the right to refrain from signing a statement of his loyalty, a public school teacher should have the right to sign a statement which he believes to be true. He should not be subject to dismissal under a statute which allows his statement to be construed to be "not in the best interests of the schools."

CONCLUSION.

Based on the foregoing, appellant respectfully submits that the penalty he has been given for exercising his right of free speech coupled with the unusual recurrence of this same issue in other jurisdictions should prompt this court to exercise its jurisdiction in this case.

Respectfully submitted,

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APPENDIX A.

RESOLUTION.

Be it and It Is Hereby Resolved by the Board of Education of Township High School District Number 205, Will County, Illinois, as follows:

1. That Marvin L. Pickering, a teacher employed by this District, be and he is hereby dismissed from his employment by this District as such teacher effective December 30, 1964, for the following charges, reasons and causes:

That he did write a certain letter to the editor of The Lockport Herald, a newspaper published in and having a general circulation in said District, and that he caused said letter to be published in said newspaper in its edition of Thursday, September 24, 1964 on page 4 thereof, which said letter contained many untrue and false statements and comments which directly and by innuendo and without justification questioned and unpugned the motives, honesty, integrity, truthfulness, responsibility and competence of this Board of Education and the School Administrators of this District in carrying out their official duties, a copy of which letter as published in said newspaper is attached hereto and made a part of this resolution, which said statements, comments and questions contained in said letter written and caused to be published by said Marvin L. Pickering seriously involved and damaged the professional reputations of said Administrators and Board and the reputation of the schools of this District and are and will be highly disruptive to the discipline of the teachers and the morale and harmony among teach-

ers, administrators, Board of Education and residents of this District, and which said statements and comments will tend to foment controversy, conflict and dissension among them and jeopardize the welfare of the schools of this District.

2. That this Board of Education finds that said charges, reasons and causes as set forth in Paragraph One of this Resolution are true and is of the opinion that the best interests of this District and the Schools of this District require such dismissal and that this Board further finds that its charges on account of said reasons and causes are not remediable.

3. That written notice of such charges and a bill of particulars thereof be served upon said Marvin L. Pickering as required by law.

Dated this 8th day of October, 1964.

/s/ Willard A. Anderson,
President, Board of Education of Township High School District Number 205, Will County, Illinois.

Attest:

/s/ Felix L. Borio,
Secretary, Board of Education of Township High School District Number 205, Will County, Illinois.

LETTERS TO THE EDITOR

* * * Graphic Newspapers, Inc.

Thursday, September 24, 1964 page 4.

Dear Editor:

I enjoyed reading the back issues of your paper which you loaned to me. Perhaps others would enjoy reading them in order to see just how far the two new high schools have deviated from the original promises by the Board of Education. First, let me state that I am referring to the February through November, 1961 issues of your paper, so that it can be checked.

One statement in your paper declared that swimming pools, athletic fields, and auditoriums had been left out of the program. They may have been left out but they got put back in very quickly because Lockport West has both an auditorium and athletic field. In fact, Lockport West has a better athletic field that Lockport Central. It has a track that isn't quite regulation distance even though the board spent a few thousand dollars on it. Whose fault is that? Oh, I forgot, it wasn't supposed to be there in the first place. It must have fallen out of the sky. Such responsibility has been touched on in other letters but it seems one just can't help noticing it. I am not saying the school shouldn't have these facilities, because I think they should, but promises are promises, or are they?

Since there seems to be a problem getting all the facts to the voter on the twice defeated bond issue, many letters have been written to this paper and probably more will follow, I feel I must say something about the letters and their writers. Many of these letters did not give the whole story. Letters by your Board and Administration have

stated that teachers' salaries total $1,297,746 for one year. Now that must have been the total payroll, otherwise the teachers would be getting $10,000 a year. I teach at the high school and I know this just isn't the case. However, this shows their "stop at nothing" attitude. To illustrate further, and I quote, "Any teacher that opposes the referendum should be prepared for the consequences". I think this gets at the reason we have problems passing bond issues. Threats take something away; these are insults to voters in a free society. We should try to sell a program on its merits, if it has any.

Remember those letters entitled "District 205 Teachers Speak", I think the voters should know that those letters have been written and agreed to by only five or six teachers, not 98% of the teachers in the high school. In fact, many teachers didn't even know who was writing them. Did you know that those letters had to have the approval of the superintendent before they could be put in the paper? That's the kind of totalitarianism teachers live in at the high school, and your children go to school in.

In last week's paper, the letter written by a few uninformed teachers threatened to close the school cafeteria and fire its personnel. This is ridiculous and insults the intelligence of the voter because properly managed school cafeterias do not cost the school district any money. If the cafeteria is losing money, then the board should not be packing free lunches for athletes on days of athletic contests. Whatever the case, the taxpayer's child should only have to pay about 30¢ for his lunch instead of 35¢ to pay for free lunches for the athletes.

In a reply to this letter your Board or Administration will probably state that these lunches are paid for from receipts from the games. But $20,000 in receipts doesn't pay for the $200,000 a year they have been spending on varsity sports while neglecting the wants of teachers.

You see we don't need an increase in the transportation tax unless the voters want to keep paying $50,000 or more a year to transport athletes home after practice and to away games, etc. Rest of the $200,000 is made up in coaches' salaries, athletic directors' salaries, baseball pitching machines, sodded football fields, and thousands of dollars for other sports equipment.

These things are all right, provided we have enough money for them. To sod football fields on borrowed money and then not be able to pay teachers' salaries is getting the cart before the horse.

If these things aren't enough for you, look at East High. No doors on many of the classrooms, a plant room without any sunlight, no water in first aid treatment room, are just a few of many things. The taxpayers were really taken to the cleaners. A part of the sidewalk in front of the building has already collapsed. Maybe Mr. Hess would be interested to know that we need blinds on the windows in that building also.

Once again, the board must have forgotten they were going to spend $3,200,000 on the West building and $2,300,000 on the East building.

As I see it, the bond issue is a fight between the Board of Education that is trying to push tax-supported athletics down our throats with education, and a public that has mixed emotions about both of these items because they feel they are already paying enough taxes, and simply don't know whom to trust with any more tax money.

I must sign this letter as a citizen, taxpayer and voter, not as a teacher, since that freedom has been taken from the teachers by the administration. Do you really know what goes on behind those stone walls at the high school?

Respectfully,

MARVIN L. PICKERING.

APPENDIX B.

ANSWER TO BILL OF PARTICULARS.

Now comes the Board of Education of Township High School District No. 205, Will County, Illinois, by Krusemark and Bertani, its attorneys, through Louis R. Bertani, and for answer to the bill of particulars heretofore filed by Marvin L. Pickering, says:

1. State specifically what statements and comments in the publication complained of are true or false:

A. The source of the majority of the allegations contained in the letter is not the February through November, 1961 issues of the Lockport Herald as indicated in paragraph 1 of Mr. Pickering's letter.

B. The first sentence of Mr. Pickering's letter states that others would enjoy reading the back issues of the Lockport Herald to see just how far the two new high schools have deviated from the original promises of the Board of Education where in fact, there has not been a substantial deviation.

C. In paragraph 2 of Mr. Pickering's letter he states that athletic fields and auditoriums were originally left out of the program. This is not true.

D. The athletic field at Lockport Central is regulation distance.

E. As to teachers' salaries stated in paragraph 3 of Mr. Pickering's letter we know of no letter written by either the board or administration that states teachers' salaries for the figure as indicated.

F. The superintendent has never told the teachers the

following: "Any teachers that oppose the referendum should be prepared for the consequences."

G. As to paragraph 4 of Mr. Pickering's letter dealing with the letter entitled: "District 205 Teachers Speak," it is not true that 98% of the school teachers are supposed to have agreed to this letter.

H. Letters do not have to have the approval of the superintendent before they can be put in the paper.

I. The cafeteria is not losing money because of packing free lunches for athletes on days of athletic contests.

J. Lunch prices are not 35¢ rather than 30¢ because of packing of free lunches for athletes.

K. The school board is not spending $200,000.00 a year on varsity sports and is not neglecting the wants of teachers.

L. As to paragraph 5 of Mr. Pickering's letter, the cost of transporting athletes home after practice and to away games and etc. is not $50,000.00.

M. As to paragraph 6 of Mr. Pickering's letter, football fields have not been sodded on borrowed money.

N. Teachers' salaries have always been paid.

O. The freedom of a teacher to sign a letter as a teacher and have the same published has not been taken away from Mr. Pickering or any teacher at Township High School District No. 205 by this administration.

P. The bond issue has not been twice defeated.

2. State specifically what statements and comments in the publication complained of directly question the motives, honesty, integrity, truthfulness, responsibility or confidence of the Board of Education or the school administrators of said school district in carrying out their official duties.

A. Paragraph 1 charges that the Board of Education

have deviated extremely from the original plans of the two new high schools.

B. Paragraph 2 by the use of the phrase: "Promises are promises or are they?" Mr. Pickering directly questions all of the items specified in paragraph 2 of the Bill of Particulars.

C. Paragraph 3 refers to the "Stop at Nothing" attitude of the board.

D. The statement that the superintendent told the teachers "any teachers that oppose the referendum should be prepared for the consequences."

E. The statement, "That's the kind of totalitarianism teachers live in at the high school and their children go to school in."

F. The statement that the board, by giving free lunches to athletes is causing students to pay an additional 5¢ for their cafeteria meal.

G. The statement that $50,000.00 or more is being paid to transport athletes.

H. The statement that teachers salaries have not been paid.

I. The statement that the taxpayers were really taken to the cleaners.

J. The statement that the Board of Education is trying to push tax supported athletics down our throats.

K. The statement that the public doesn't know who to trust with any more money.

L. The statement that the freedom of signing a letter as a teacher has been taken away by the administration.

M. The question, "do you really know what goes on behind those stone walls at the high school?"

3. State specifically what statements or comments in said publication contain innuendoes to the effect stated in paragraph 2 hereof.

A. To see just how far the two new high schools have deviated from the original promises by the Board of Education.

B. In regard to the allegations that the track is not of regulation distance, the question is then asked: "Whose fault is that?" "Oh, I forgot it wasn't supposed to be there in the first place." "It must have fallen out of the sky."

C. "Promises are promises or are they?"

D. "Stop at Nothing" attitude.

E. "Threats, take away something, these are insults to voters in a free society. We should try to sell a program on its merits, if it has any."

F. "The taxpayers were really taken to the cleaners."

4. State specifically what member or members of the Board of Education are or may be injured by the said publications in any of the respects mentioned in the notice of dismissal.

The entire make-up of the present board and all former members of the board who were members since 1961.

5. State specifically the names of the school administrators of said school district concerning whom any untrue or false statements are made in said publication and what statements therein apply to each person so named.

Dr. William H. Blatnik.

A. "Any teachers that oppose the referendum should be prepared for the consequences."

B. Did you know, that those letters had to have the approval of the superintendent before they could be put in the paper.

C. To sod football fields on borrowed money and then not be able to pay teachers' salaries is getting the cart before the horse.

D. The taxpayers were really taken to the cleaners.

E. I must sign this letter as a citizen and taxpayer and voter, not as a teacher, since that freedom has been taken away from the teachers by the administration.

6. State specifically in what manner, if any, statements or comments in said letter in any way or manner involved or damaged the professional reputations of any of said administrators or the board of education or any of the members thereof. Please state the names of the administrators and members of the board, if any, so injured or damaged.

The entire letter with its previously specifically identified false statements and innuendoes would damage the professional reputation of the administrators and the members of the Board of Education. The answer to the previous questions indicate specifically the areas of the letter referred to. Statements that accuse the administration of being totalitarian and of threatening the school teachers and further of taking the public to the cleaners *per se* damage the reputation of the entire administrative staff of said school. Statements that accuse board members of deviating substantially from promises, of implying that promises made by the board were not intended to be kept; of accusing the board of permitting the taxpayers to be taken to the cleaners; of promoting an athletic program to the detriment of the educational program; of permitting cafeteria charges to be increased to promote free lunches for athletes and the many other things referred to in the answer to the first four (4) questions *per se* damage the

reputation of the entire board of education of said school district. This is true not only of the present board but the board members who have not succeeded themselves since 1961. The names and addresses as requested in this question are attached hereto and a part hereof.

7. State specifically what statements and comments have in any way or manner involved or damaged the reputation of said school district.

See answer to request for bill of particulars 1, 2, 3, 4 and 6.

8. State specifically what statements or comments in said publication are disruptive of the discipline of the teachers of said school district, and what disruptions have occurred.

The charge in the notice of dismissal states in part as follows: ". . . said statements, comments and questions contained in said letter written and caused to be published by you seriously involved and damaged . . . the reputation of the schools of this district and are and will be highly disruptive to the discipline of the teachers, . . ." Statements that accuse the administration as indicated in the answer to questions 1, 2, 3, 4 and 6 of this bill of particulars would *per se* disrupt the discipline of teachers if the maker of said statements were allowed to do so without action on the part of the board and administration.

9. State specifically what statements or comments in said publication are or will be disruptive of the morals and harmony among the teachers, administrators, board of education or residents of said school district and what disruptions have occurred.

See answer to question No. 8.

10. State specifically the names of said teachers, administrators, board of education and residents.

The entire staff of the district as well as its administration and all present board members and board members since February of 1961.

11. State specifically what statements and comments in said publication have tended or will tend to foment controversy, conflict, or dissension among said teachers, administrators, the board of education or any member or members thereof, or residents of said school district.

See answer to questions 1, 2, 3, 4 and 6.

12. State specifically what statements or comments in said publication have or will hereafter jeopardize the welfare of the schools of the said school district.

See answer to questions 1, 2, 3, 4 and 6.

13. State specifically what statements or comments in said publication, if any, are deemed by you to have been made without justification.

See answer to questions 1, 2, 3, 4 and 6. Summarizing, the entire letter is one series of either untruths, half truths or mis-statements. It is a conglomeration taken out of context of the original bond issue proposal which provided for two two-year high schools which was defeated and the second bond issue proposal which provided for a four-year west side high school and a two-year east side high school, which second proposal was successful and the recent referendums for a tax rate increase for the educational fund and for the transportation fund.

14. State specifically what statements or comments contained in said publication contained innuendoes resulting in the damage complained of in the notice of dismissal.

See answers to questions 1, 2, 3, 4 and 6.

BOARD OF EDUCATION,
TOWNSHIP HIGH SCHOOL DISTRICT
No. 205,
WILL COUNTY, ILLINOIS,
By KRUSEMARK & BERTANI,
/s/ LOUIS R. BERTANI.

Dr. William H. Blatnik
901 First Street
Lockport, Illinois

Kenneth Kibler
624 Lynn Street
Lockport, Illinois

Mr. Melvin Smith
833 Summit Drive
Lockport, Illinois

Ernest H. Swenson Jr.
808 Valley Lane
Lockport, Illinois

Willard A. Anderson
321 E. 5th Street
Lockport, Illinois

Harold M. Finley
630 E. 12th Street
Lockport, Illinois

Felix Borio
2411 Wilcox Street
Joliet, Illinois

Matthew Viscum
124 Nobes Avenue
Lockport, Illinois

Barney N. Welter
Route No. 1
Lockport, Illinois

Aldo Anzolin
Parker Road
Lockport, Illinois

Laurence Tendell
31 Arlington Drive
Lockport, Illinois

Norman Rowley
540 East 10th Street
Lockport, Illinois

William Babich
730 Green Garden Place
Lockport, Illinois

Carroll H. Ward
1420 S. Hamilton Street
Lockport, Illinois

APPENDIX C.

RESOLUTION.

Whereas, The Board of Education of Township High School District Number 205, Will County, Illinois, duly passed and adopted a resolution at its regular meeting held on the 8th day of October, 1964, dismissing tenure teacher, Marvin L. Pickering, effective December 30, 1964, for the charges, causes and reasons therein set forth and found not to be remediable; and

Whereas, said teacher, Marvin L. Pickering, was personally served with notice of such charges, reasons and causes and a bill of particulars thereof on October 9, 1964; and

Whereas, said teacher, Marvin L. Pickering, duly requested a public hearing on said charges in writing within ten (10) days after the service of such notice; and

Whereas, said teacher, Marvin L. Pickering, subsequently requested a further bill of particulars of said charges which the Board of Education duly furnished him; and

Whereas, the public hearing on said charges on account of said causes and reasons was duly held on November 19th and 20th, 1964 whereat said Marvin L. Pickering appeared personally and by his attorney; and

Whereas, said public hearing was duly adjourned to December 2, 1964, at 7:30 o'clock P. M., at the Library of the Lockport Central High School, located at 12th and Jefferson Streets, Lockport, Illinois, for decision pursuant to taking matter under advisement; and

Whereas, the President of this Board of Education duly

called a special meeting of this Board of Education pursuant to law by giving notice thereof in writing by mail more than forty-eight (48) hours before such meeting to each board member, stating the time, place and purpose of the meeting, said special meeting having been called to be held concurrently with such adjourned public hearing for the sole purpose to consider and determine by decision the charges made and the issues raised in the aforesaid public hearing and to pass and adopt a resolution deciding said charges and issues and to take any necessary action in regard thereto; and

Whereas, this Board of Education now duly meets concurrently in adjourned session of said public hearing and in duly called special meeting to make such decision.

Now, therefore, be it and it is hereby resolved by this Board of Education of Township High School District Number 205, Will County, Illinois, as follows:

Section 1. That this Board of Education having fully considered the charges made against teacher, Marvin L. Pickering, on account of the causes and reasons for his dismissal all as set forth in said resolution passed and adopted October 8, 1964; and the proceedings had in the public hearing duly held on November 19th and 20th, 1964, at the written request of said Marvin L. Pickering, finds and decides from the sworn testimony and exhibits introduced at said public hearing that the causes and reasons for such dismissal and charges made by this Board of Education against said Marvin L. Pickering on account thereof are true, fully proven and supported by the evidence and that no meritorious or sufficient defense was interposed thereto or proven by said Marvin L. Pickering.

Section 2. That this Board of Education finds and decides that said causes and reasons for dismissal and its charges proven on account of them are not remediable and that it is in the best interests of this School

District and the schools of this School District that said teacher be dismissed.

Section 3. That the action of this Board of Education in its said resolution of October 8, 1964, dismissing said Marvin L. Pickering as a teacher of this School District effective December 30, 1964, be and the same is hereby approved and he is hereby dismissed from his employment by this School District as such teacher effective December 30, 1964.

Section 4. That a copy of this resolution be served upon said Marvin L. Pickering as notice of the decision of this Board of Education.

Passed and adopted this 2nd day of December, 1964.

/s/ WILLARD A. ANDERSON,
President, Board of Education.

Attest:

/s/ FELIX L. BORIO,
Secretary Pro Tempore,
Board of Education.

APPENDIX D.

OPINION OF THE CIRCUIT COURT FILED MARCH 2, 1966.

After public hearing, dismissal of tenure teacher Marvin L. Pickering was approved and confirmed by Board Resolution finding the charges proved, not remedial, and the dismissal in the best interests of the School.

On administrative review, the court will set aside the final administrative action if the action is without substantial foundation in the record or is manifestly against the weight of the evidence. The best interest of the school is the guiding star of the board and the interference of the court is justified only where a board acted capriciously, maliciously and arbitrarily.

In this case, I find the action of the board is supported by substantial evidence and is not capricious, malicious or arbitrary.

The proper and efficient education of children is a vital and important function of state government. The state has a real concern in the integrity of the school, and the legislature may specify the conditions and reasons for dismissal of the teacher. The calling of teacher is so intimate, the duties so delicate, the things in which a teacher might prove unworthy or would fail are so numerous, that the legislature cannot enumerate all such possible grounds. Therefore, the legislative standard in the statute that the board has the power to dsimiss any teacher "whenever, in its opinion, the interests of the schools require it" is constitutionally sufficient. It is not a standard so vague and indefinite as to be a denial of due process.

That the freedom of speech is a highly protected right

is not denied; the judiciary has been zealous in protecting the rights of free speech, press and assembly. Freedom of speech may be limited only for strong and weighty reasons. The public interest to be protected must be of such importance that it overrides the right of free speech.

The constitutional question squarely presented in this case is whether or not there is any public interest to be protected which is so important that it overrides Pickering's freedom of speech. I answer yes. The state has the right and duty to screen the officials, teachers, and employees as to their fitness to maintain the integrity of the schools as a part of ordered society. By statute, the legislature empowered the board to dismiss the teachers when, in its opinion, the interests of the school require it. The interests of the school is patently an overriding public interest.

Pickering's conduct was adverse to the interests of the school. The board decided that the interests of the school required his dismissal. Freedom of speech does not protect the job of an employee whose conduct is against the interests of his boss.

It is the judgment of this Court that the final administrative decision of the Board of Education be affirmed.

Defendant's attorneys are directed to prepare formal order and present same to the Court for signature.

MICHAEL A. ORENIC,
Circuit Judge.

ORDER ENTERED MARCH 25, 1966.

Upon due notice to plaintiff and defendant this cause comes on for hearing upon the complaint for administrative review of plaintiff, Marvin L. Pickering, and the answer of the defendant, Board of Education of Township High School District Number 205, Will County, Illinois, consisting of the original record of the proceedings had before it under review, and the Court having review, and considered said complaint; said record of proceedings had before this Board of Education filed herein; the written briefs and arguments of said parties and the oral arguments of counsel, and the Court having taken this cause and the aforesaid matters under advisement and having duly considered the same and now being fully advised in the premises finds that it has jurisdiction of the subject matter of this cause and parties thereto and that the final administrative decision of the Board of Education of Township High School District Number 205, Will County, Illinois, of December 2, 1964, dismissing plaintiff from employment by said District as a teacher, and constituting and being a part of said record of proceedings filed herein, is supported by substantial evidence, and the law is not capricious, malicious or arbitrary; is correct and should be affirmed.

It is, therefore, ordered, adjudged and decreed by the Court that the final administrative decision of December 2, 1964, rendered by the Board of Education of Township High School District Number 205, Will County, Illinois, constituting and being a part of the original record of proceedings filed in this cause by said Board of Education, be and the same is hereby affirmed.

Dated this 25th day of March, 1966.

Enter:

/s/ MICHAEL A. ORENIC,

Judge.

APPENDIX E.

UNITED STATES OF AMERICA.

STATE OF ILLINOIS, } ss.
SUPREME COURT. }

AT A TERM OF THE SUPREME COURT, begun and held in Springfield, on Monday, the thirteenth day of March in the year of our Lord, one thousand nine hundred and sixty-seven, within and for the State of Illinois.

Present: ROY J. SOLFISBURG, JR., Chief Justice
JUSTICE WALTER V. SCHAEFER
JUSTICE RAY I. KLINGBIEL
JUSTICE BYRON O. HOUSE
JUSTICE ROBERT C. UNDERWOOD
JUSTICE THOMAS E. KLUCZYNSKI
JUSTICE DANIEL P. WARD
WILLIAM G. CLARK, Attorney General
ROBERT G. MILEY, Marshal

Attest: MRS. EARLE BENJAMIN SEARCY, Clerk

BE IT REMEMBERED, that, to-wit: on the 27th day of March, A.D. 1967, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

Marvin L. Pickering, *Appellant,* vs. Board of Education of Township High School, District Number 205 Will County, Illinois, *Appellee.*	Appeal from Circuit Court Will County.
No. 40038	

And now, on this day, the Court having duly considered the petition for rehearing filed herein, and being now fully advised of and concerning the premises, doth overrule the prayer of the petition and denies a rehearing in this cause.